

JUN 06 2006

## EMPLOYER STATUS DETERMINATION

**Cassatt Management, LLC, d/b/a Bay Coast Railroad (BCRR)**

This is a determination of the Railroad Retirement Board concerning the status of Cassatt Management, LLC, (Cassatt), d/b/a Bay Coast Railroad (BCRR), as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.).

In Surface Transportation Board (STB) Finance Docket No. 34814, decided January 27, 2006, BCRR filed a verified notice of exemption to lease from Canonie Atlantic Company (Canonie), acting on behalf of the Accomack-Norhampton Transportation District Commission, and to operate approximately 68.3 miles of rail line as follows: (1) between Eastern Shore Railroad, Inc. (ESHR) (BA No. 3417) milepost 30.5 at Pocomoke City, Maryland (Norfolk Southern Railway Company (NS) (BA No. 9408) interchange), and ESHR milepost 94.8 at Cape Charles, Virginia (float bridge); (2) between ESHR milepost 95.0 at Little Creek (Virginia Beach), Virginia, and ESHR milepost 97.6 at Camden Heights (Norfolk), Virginia; and (3) between ESHR milepost 100.7 at North Junction and ESHR milepost 102.1 at St. Julian, Virginia. As part of the transaction, BCRR is being assigned to operate a 4.6 mile line of railroad leased by Canonie from NS extending (a) between ESHR milepost 97.6 at Camden Heights and ESHR milepost 100.7 at North Junction; and (b) on the Diamond Springs Line between NS milepost SN 5.2 and NS milepost SN 6.7. BCRR also is being assigned to operate Canonie's trackage rights over a 4.0-mile line of railroad owned by NS, extending between Coleman Place and NS's Portlock Yard for interchange purposes. ESHR currently operates these lines.

Information regarding BCRR was furnished by Ms. Joyce Collins. In a facsimile dated March 8, 2006, Ms. Collins stated that the Chief Executive Officer of BCRR is Mr. Richard S. Foster. BCRR is owned by Baymark Construction Corporation (Baymark), according to Ms. Collins, and Cassatt is a wholly owned subsidiary of Baymark. Ms. Collins stated that BCRR began operations on January 18, 2006. Ms. Collins stated that Cassatt is replacing ESHR as operator of the rail line. Ms. Collins stated that all 20 former ESHR employees are now Cassatt employees and that they were hired on February 18, 2006. BCRR "will be operating former ESHR trackage from Pocomoke City, MD to Cape Charles, VA and between Little Creek, VA and Norfolk, VA. This consists of 68.3 ownership miles, 4.6 leased miles and trackage rights of approximately 4.0 miles," as stated by

Ms. Collins. Ms. Collins stated that BCRR serves the southern part of the Delmarva Peninsula and connects with NS at Pocomoke City, Maryland and travels south to Cape Charles, Virginia, where rail cars are transported across the Chesapeake Bay to and from Little Creek, Virginia. Ms. Collins stated that Cassatt has signed a 30-year lease and operating agreement with Canonie, the owner of the rail line. Ms. Collins stated that BCRR will handle approximately 3,000 freight carloads in 2006 and derives 78 percent of its revenue from cars interchanged with NS and 22 percent of its revenue from CSX Transportation (CSX) (BA No. 1524). BCRR interchanges with NS and CSX through the Norfolk Portsmouth Railroad (NPRR) (BA No. 4401) in Norfolk, Virginia, according to Ms. Collins.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of Title 49, United States Code.

Section 1 of the RUIA contains essentially the same definition. (45 U.S.C. § 351, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that BCRR is a rail carrier operating in interstate commerce. Accordingly, it is determined that Cassatt Management, LLC, d/b/a Bay Coast Railroad (BCRR), became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective January 18, 2006, the date it began operations.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever